

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Douglas Lee Horn,) No. CV-04-2014-PHX-SMM (LOA)
10 Plaintiff,) **ORDER**
11 v.)
12 Dora Schriro, et al.,)
13 Defendants.)
14

15 On June 8, 2006, Magistrate Judge Lawrence O. Anderson filed a Report and
16 Recommendation, advising this Court that Plaintiff's Motion to Vacate Conviction and Sentence
17 pursuant to 28 U.S.C. § 2255 should be denied without prejudice, or in the alternative, stricken
18 because there have been no criminal proceedings in this Court against Plaintiff, nor has Plaintiff
19 been sentenced by this Court. (Dkt. 151.) To date, Plaintiff has not filed objections to Judge
20 Anderson's Report and Recommendation.

21 **STANDARD OF REVIEW**

22 When reviewing a Magistrate Judge's Report and Recommendation, this Court must
23 "make a de novo determination of those portions of the report . . . to which objection is made,"
24 and "may accept, reject, or modify, in whole or in part, the findings or recommendations made
25 by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); see also Baxter v. Sullivan, 923 F.2d 1391,
26 1394 (9th Cir. 1991) (citing Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir.
27 1983)).
28

1 By failing to object to a Report and Recommendation, a party waives his right to
2 challenge the Magistrate's factual findings, but not necessarily the Magistrate's legal
3 conclusions. Baxter, 923 F.2d at 1394; see also Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.
4 1998) (failure to object to Magistrate's legal conclusion "is a factor to be weighed in
5 considering the propriety of finding waiver of an issue on appeal"); Martinez v. Ylst, 951 F.2d
6 1153, 1156 (9th Cir. 1991) (citing McCall v. Andrus, 628 F.2d 1185, 1187 (9th Cir. 1980)).

7 **DISCUSSION**

8 Having reviewed the legal conclusions of the Report and Recommendation of the
9 Magistrate Judge, and no objections having been made by Plaintiff thereto, the Court hereby
10 incorporates and adopts the Magistrate Judge's Report and Recommendation.

11 **CONCLUSION**

12 For the reasons set forth,

13 **IT IS HEREBY ORDERED** that the Court adopts the Report and Recommendation
14 of Magistrate Judge Lawrence O. Anderson. (Dkt. 151.)

15 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Vacate Conviction and
16 Sentence pursuant to 28 U.S.C. § 2255 (dkt. 108) shall be **STRICKEN** from the docket.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall send a copy of this
18 Order to all parties as well as to Magistrate Judge Lawrence O. Anderson.

19 DATED this 16th day of July, 2006.

20
21 
22 _____
23 Stephen M. McNamee
24 United States District Judge
25
26
27
28